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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

11 JESSE CANTU, individually and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 DFO, LLC., a Delaware limited liability
company; DENNY'S CORPORATION, a
15 Delaware corporation; DENNY'S, INC., a
Florida corporation; and DOES 1 through
16 10, inclusive,

17 Defendant.

Case No. 2:23-cv-03696

**COMPLAINT FOR VIOLATION OF
THE VIDEO PROTECTION
PRIVACY ACT**

Filed:

Trial Date: None Set

I. INTRODUCTION

Whenever someone watches a video on <https://www.dennys.com> (the “Website”), Defendant secretly reports all the details to Facebook: the visitor’s personally identifiable information (“PII”), the titles watched, and more. Why? Data harvesting and targeted advertising.

As shown below, Defendant's actions violate the Video Privacy Protection Act, 18 U.S.C. § 2710 ("VPPA"). As such, Defendant is liable to each class member for \$2,500 and related relief.

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28
U.S.C. § 1331 because it arises under the VPPA, a federal law.

2. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the acts and events giving rise to the class claims occurred in this District. Upon information and belief, plaintiff and many Class members reside in this District.

3. Defendant is subject to personal jurisdiction because the exercise of jurisdiction over Defendant is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiff believes that Defendant generates a minimum of eight percent of its online revenues based upon its website interactions with Californians such that the website “is the equivalent of a physical store in California.” Since this case involves illegal conduct emanating from Defendant’s operation of its website targeting Californians, California courts can “properly exercise personal jurisdiction” over the Defendant in accordance with the Court of Appeal opinion in *Thurston v. Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

III. PARTIES

4. Plaintiff is a resident and citizen of California who resides in this Judicial District. Plaintiff watched a video titled ***“Hungry for Education”*** in early 2023 on Defendant’s website at the link <https://www.dennys.com/hfe/>.

1 5. Defendant is a for-profit corporation with its principal place of business in
2 Columbia, South Carolina. Defendant operates a chain of quick serve restaurants called
3 “Denny’s”, and also owns, operates, and/or controls the Website and offers multiple
4 videos for consumers to view and play through the Website. The Website is widely
5 available throughout the United States and in this District.

6 **IV. FACTUAL ALLEGATIONS**

7 **A. The Facebook Tracking Pixel**

8 6. Facebook is a social networking company where users are required to
9 identify themselves by “the name they go by in everyday life.”¹ To create a Facebook
10 account, a user must provide first name, last name, date of birth and gender.²

11 7. Facebook generates revenue by selling advertising space on its website
12 based upon its ability to identify user interests.³ Facebook can identify user interests by
13 monitoring “offsite” user activity, which allows Facebook to judge user interests beyond
14 what users freely disclose.⁴

15 8. Facebook enables advertisers to identify “people who have already shown
16 interest in [their] business”, which Facebook calls “Custom Audiences.”⁵ The Custom
17 Audiences tool requires advertisers to supply user data to Facebook, and most do so via
18 the Facebook Tracking Pixel.⁶

19 ¹ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND
20 AUTHENTICITY,
21 https://www.facebook.com/communitystandards/integrity_authenticity (last visited May
15, 2023).

22 ² FACEBOOK, SIGN UP, <https://www.facebook.com/> (last visited May 15, 2023).

23 ³ FACEBOOK, WHY ADVERTISE ON FACEBOOK,
24 <https://www.facebook.com/business/help/20502906038706> (last visited May 15, 2023).

25 ⁴ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO
26 WILL LOVE
27 YOUR BUSINESS, <https://www.facebook.com/business/ads/ad-targeting> (last visited
May 15, 2023).

28 ⁵ FACEBOOK, ABOUT EVENTS CUSTOM AUDIENCE,
29 <https://www.facebook.com/business/help/366151833804507?id=300360584271273>
(last visited May 15, 2023).

30 ⁶ FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE,
31 <https://www.facebook.com/business/help/170456843145568?id=2469097533764> 94
32 (last visited May 15, 2023); FACEBOOK, CREATE A WEBSITE CUSTOM
33 AUDIENCE,
34 <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>
(last visited May 15, 2023).

1 9. The Facebook Tracking Pixel is a device included programming code that
2 advertisers can integrate into their website. Once activated, the Facebook Tracking Pixel
3 “tracks the people and type of actions they take.”⁷ When the Facebook Tracking Pixel
4 captures an action, it sends a record to Facebook, which Facebook then assimilates into
5 the Custom Audiences dataset.

6 10. Advertisers control what actions—or, as Facebook calls it, “events”—the
7 Facebook Tracking Pixel will collect, including the website’s metadata, along with what
8 pages a visitor views.⁸

9 11. Advertisers control how the Facebook Tracking Pixel identifies visitors. The
10 Facebook Tracking Pixel is configured to automatically collect “HTTP Headers” and
11 “Pixel-specific Data.”⁹ HTTP Headers collect “IP addresses, information about the web
12 browser, page location, document, referrer and persons using the website.”¹⁰ Pixel-
13 specific Data includes “the Pixel ID and cookie.”¹¹

14 **B. Defendant, The Website, and The Facebook Pixel**

15 12. Defendant’s business involves monetizing videos on its website for various
16 purposes such as brand awareness and marketing. As such, Defendant is a “video tape
17 service provider” under the VPPA because, as part of its business, it delivers
18 “prerecorded video” content or other “similar audio visual materials.” 18 U.S.C. §
19 2710(a)(4).

20 13. Federal courts have interpreted the term “video tape service provider” to
21 include commercial website owners/operators like Defendant. *See, e.g., Czarnionka v.*
22 *The Epoch Times Ass’n, Inc.*, 2023 WL 17069810, at *4 (S.D.N.Y. Nov. 17, 2023);
23 *Lebakken v. WebMD, LLC*, 2023 WL 16716151, at *1, *3 & n.2 (N.D. Ga. Nov. 4, 2023);

24 ⁷ FACEBOOK, RETARGETING, <https://www.facebook.com/business/oals/retargeting>.

25 ⁸ See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING,
26 ADVANCED, <https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also
27 FACEBOOK, BEST PRACTICES FOR FACEBOOK PIXEL SETUP,
<https://www.facebook.com/business/help/218844828315224?id=1205376682832142>
(last visited May 15, 2023).

28 ⁹ FACEBOOK, FACEBOOK PIXEL, <https://developers.facebook.com/docs/facebook-pixel/> (last visited May 15, 2023).

10 ¹⁰ *Id.*

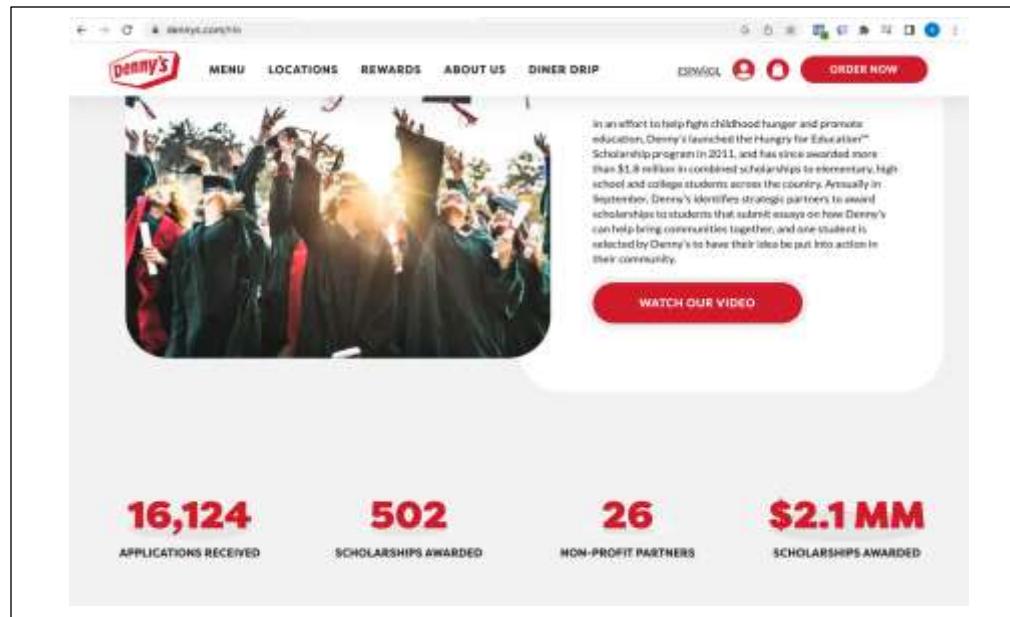
11 ¹¹ *Id.*

1 *Ambrose v. Boston Globe Media Partners LLC*, 2023 WL 4329373, at *2 (D. Mass. Sept.
2 19, 2023); *Louth v. NFL Enterprises LLC*, 2023 WL 4130866, at *4 (D.R.I. Sep't 12,
3 2023); *In re Facebook, Inc., Consumer Privacy User Profile Litig.*, 402 F. Supp. 3d 767,
4 798-99 (N.D. Cal. 2019); *Cappello v. Walmart Inc.*, 2019 WL 11687705, at *2 (N.D. Cal.
5 Apr. 5, 2019); *Yershov v. Gannett Satellite Info Network, Inc.*, 820 F.2d 482, 485 n.2 (1st
6 Cir. 2016); *In re Hulu Privacy Litig.*, 2012 WL 3282960, at *6 (N.D. Cal. Aug. 10, 2012).

7 14. VPPA defines PII to “include[]” “information which identifies a person as
8 having requested or obtained specific video materials or services from a video tape
9 service provider.” 18 U.S.C. § 2710(a)(3). This means “information that would ‘readily
10 permit an ordinary person to identify a specific individual's video-watching behavior.’”
11 *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 985 (9th Cir. 2017) (quoting *In re Nickelodeon*
12 *Consumer Privacy Litig.*, 827 F.3d 262, 290 (3d Cir. 2016)).

13 15. Defendant's website allows visitors to watch a video entitled “***Hungry for***
14 ***Education***” as shown below:

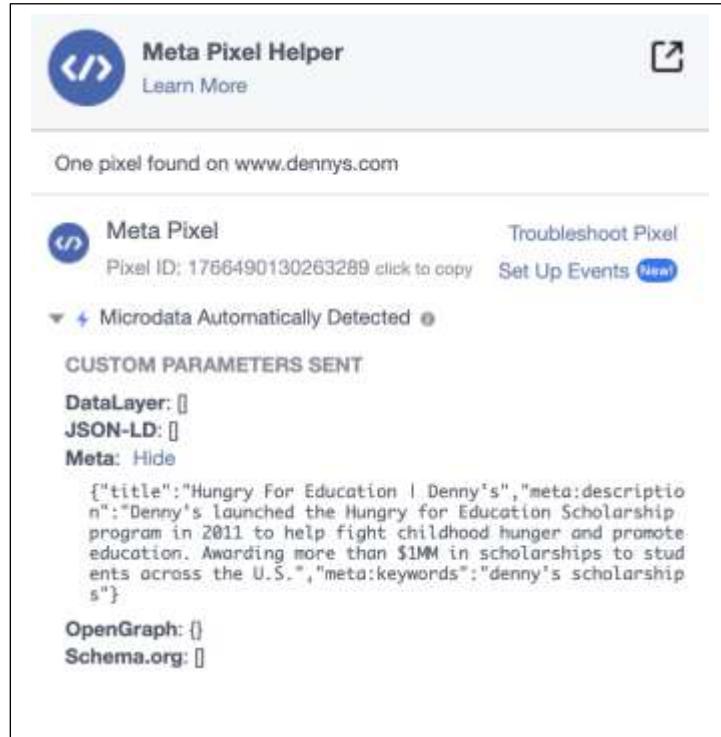
15 **Figure 1**



26 16. Defendant knowingly permits <https://www.dennys.com/> to host the
27 Facebook tracking Pixel and has configured a “Title View Event” to transmit data to
28 Facebook whenever a user visits the webpage. This is triggered immediately upon

1 visiting the URL.¹² The below example shows Defendant advising Facebook that a user
2 has watched “*Hungry for Education*”:

3 **Figure 2**



The screenshot shows a tool interface for managing a Facebook pixel. At the top, there's a logo for 'Meta Pixel Helper' with a 'Learn More' link. Below that, a message says 'One pixel found on www.dennys.com'. The main section is titled 'Meta Pixel' and shows a 'Pixel ID: 1766490130263289' with a 'click to copy' option. There are buttons for 'Troubleshoot Pixel' and 'Set Up Events'. A dropdown menu is open, showing 'Microdata Automatically Detected'. Below this, there's a section for 'CUSTOM PARAMETERS SENT' with fields for 'DataLayer: []', 'JSON-LD: []', and 'Meta: Hide'. The 'Meta' field contains a JSON object describing the video content: {"title": "Hungry For Education | Denny's", "meta:description": "Denny's launched the Hungry for Education Scholarship program in 2011 to help fight childhood hunger and promote education. Awarding more than \$1MM in scholarships to students across the U.S.", "meta:keywords": "denny's scholarship s"}. There are also sections for 'OpenGraph: {}' and 'Schema.org: {}'.

16 17. Defendant chooses to transmit various cookies to Facebook whenever a user
watches a video on the website:

18 **Figure 4**

Name	Value	Domain
fr	0nC9GJoKlgWW...	.facebook.com
xs	4%3A83gF0pKa...	.facebook.com
c_user	100090226609015	.facebook.com
wd	1277x854	.facebook.com
dpr	2	.facebook.com
usida	eyJ2ZXIiOjEslmik...	.facebook.com
datr	IBAZZC5GORfFJ...	.facebook.com
presence	C%7B%22t3%2...	.facebook.com

19 20 21 22 23 24 25 26 27 28 ¹² This data is derived from a tool created and offered by Facebook.

1 18. The fr cookie contains an encrypted Facebook ID and browser identifier.¹³
2 The datr cookies also identifies a browser.¹⁴ Facebook, at a minimum, uses the fr cookie
3 to identify particular users.¹⁵

4 19. A Facebook ID is personally identifiable information. Anyone can identify
5 a Facebook profile—and all personal information publicly listed on that profile—by
6 appending the Facebook ID to the end of Facebook.com.

7 20. Through the Facebook Tracking Pixel’s code, these cookies combine the
8 identifiers with the event data, allowing Facebook to know, among other things, what
9 <https://www.dennys.com/> videos a user has watched.¹⁶ This, of course, is in addition to
10 Defendant advising Facebook of the *precise title* of the videos watched.

11 21. Facebook confirms that it matches activity on the Website with a user’s
12 profile. Facebook allows users to download their “off-site activity,” which is a “summary
13 of activity that businesses and organizations share with us about your interactions, such
14 as visiting their apps or websites.”¹⁷ The off-site activity report confirms Defendant
15 identifies an individual’s video viewing activities.

16 22. In other words, Defendant does exactly what VPPA prohibits: it secretly
17 advises Facebook of the titles of any videos that a particular user watches in a manner
18 than enables any ordinary person to identify a user’s video-watching behavior.
19 Defendant then works with Facebook to harass such users with targeted marketing
20 whenever they are using an internet-connected device.

21
22 ¹³ DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT
23 OF RE-AUDIT (Sept. 21, 2012), http://www.europe-vfacebook.org/ODPC_Review.pdf
(last visited May 15, 2023).

24 ¹⁴ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/> (last visited May 15, 2023).

25 ¹⁵ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/> (last visited May 15, 2023).

26 ¹⁶ FACEBOOK, GET STARTED, <https://developers.facebook.com/docs/meta-pixel/get-started> (last visited May 15, 2023).

27 ¹⁷ See <https://www.facebook.com/help/2207256696182627> (Off-Facebook Activity is
only a “summary” and Facebook acknowledges “receiv[ing] more details and activity
than what appears in your Facebook activity.” What is more, it omits “information we’ve
received when you’re not logged into Facebook, or when we can’t confirm that you’ve
previously used Facebook on that device.”) (last visited May 15, 2023).

1 **C. Experience of Plaintiff**

2 23. Plaintiff has eaten at Denny's. As such, Plaintiff is a "consumer" under the
3 VPPA.

4 24. Plaintiff is a consumer privacy advocate with dual motivations for playing
5 videos on Defendant's Website. First, Plaintiff is genuinely interested in learning more
6 about the goods and services offered by Defendant. Second, Plaintiff is a "tester" who
7 works to ensure that companies abide by the privacy obligations imposed by federal law.
8 As a consumer who advance important public interests at the risk of vile personal attacks,
9 Plaintiff should be "praised rather than vilified." *Murray v. GMAC Mortgage Corp.*, 434
10 F.3d 948, 954 (7th Cir. 2006).

11 25. In enacting the VPAA, Congress intentionally chose to extend its
12 protections to all persons who watch videos, not simply those who purchase them or
13 claim pecuniary loss. As such, statutes like the VPPA are largely enforced by civic-
14 minded "testers" such as Plaintiff. *See Tourgeaman v. Collins Fin. Servs., Inc.*, 755 F.3d
15 1109 (9th Cir. 2014) (explaining why testers have Article III standing and generally
16 discussing value and importance of testers in enforcement of consumer protection and
17 civil rights statutes).

18 26. When Plaintiff played the videos on the Website, Defendant knowingly
19 disclosed the title to Facebook, along with numerous identifiers that constitute PII. In
20 other words, Defendant did exactly what the VPPA prohibits: it disclosed Plaintiff's video
21 viewing habits to a third party in a manner that any ordinary person can understand
22 Plaintiff's viewing habits.

23 27. Visitors would be shocked and appalled to know that Defendant secretly
24 discloses to Facebook all of key data regarding a visitors' viewing habits.

25 28. Defendant's conduct is illegal, offensive, and contrary to visitor
26 expectations.

V. CLASS ALLEGATIONS

29. Plaintiff brings this action individually and on behalf of all others similarly situated (the “Class”) defined as follows:

All persons in the United States who played video content on The Website and whose PII was disclosed by Defendant to any third party during the two years preceding the filing of this action (the “Class Period”).

30. **Numerosity (Fed. R. Civ. P. 23(a)(1)):** At this time, Plaintiff does not know the exact number of members of the aforementioned Class. However, given the popularity of Defendant's website, the number of persons within the Class is believed to be so numerous that joinder of all members is impractical.

31. Commonality and Predominance (Fed. R. Civ. P. 23(a)(2), 23(b)(3)):
There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual members of the Class include:

- a) whether Plaintiff and the Class are within the definition of the term, “consumer,” used in the VPPA;
- b) whether Defendant collected Plaintiff’s and the Class’s PII;
- c) whether Defendant unlawfully disclosed and continues to disclose users’ PII in violation of the VPPA;
- d) whether Defendant’s disclosures were committed knowingly; and
- e) whether Defendant disclosed PII without consent.

32. **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff's claims are typical of those of the Class because Plaintiff, like all members of the Class, used the Website to play videos, and had PII collected and disclosed by Defendant.

33. **Adequacy (Fed. R. Civ. P. 23(a)(4)):** Plaintiff has retained qualified and competent counsel who are highly experienced in complex consumer class action

1 litigation. Moreover, Plaintiff is able to fairly and adequately represent and protect the
2 interests of the Class.

3 **34. Superiority (Fed. R. Civ. P. 23(b)(3)):** A class action is superior to other
4 available methods for the fair and efficient adjudication of this controversy because
5 individual litigation of the claims of all members of the Class is impracticable. Plaintiff
6 anticipates no difficulty in the management of this action as a class action.

VI. CAUSE OF ACTION

VIOLATION OF THE VIDEO PRIVACY PROTECTION ACT

18 U.S.C. § 2710, *et seq.*

10 35. Defendant is “video tape service providers” that creates, hosts, and delivers
11 videos on the Website as set forth above for purposes of the VPPA. *See* 18 U.S.C. §
12 2710(a)(4) (emphasis added). Defendant monetizes the videos to collect and disclose
13 viewers’ PII so it can later retarget them for advertisements.

14 36. Plaintiff and members of the Class are “consumers” as set forth above under
15 18 U.S.C. § 2710(a)(1) (emphasis added).

16 37. Defendant disclosed to a third party, Facebook, Plaintiff's and the Class
17 members' personally identifiable information. Defendant utilized the Facebook Tracking
18 Pixel to compel Plaintiff's web browser to transfer Plaintiff's identifying information,
19 like their Facebook IDs, along with Plaintiff's event data, like the title of the videos
20 viewed.

21 38. Plaintiff and the Class members played videos offered by Defendant on the
22 Website.

23 39. Defendant knowingly disclosed Plaintiff's and Class members' PII because
24 it used that data to build audiences on Facebook and retarget them for its advertising
25 campaigns.

26 40. Plaintiff and Class members did not provide Defendant with any form of
27 consent—either written or otherwise—to disclose their PII to third parties.

1 41. Defendant's disclosures were not made in the "ordinary course of business"
2 as the term is defined by the VPPA because they were not necessary for "debt collection
3 activities, order fulfillment, request processing, [or] transfer of ownership." 18 U.S.C. §
4 2710(a)(2).

PRAYER FOR RELIEF

6 WHEREFORE, Plaintiff seeks judgment against Defendant, individually and on
7 behalf of all others similarly situated, as follows:

- a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Class;
- b. For an order declaring that Defendant's conduct violates the VPPA;
- c. For an order finding in favor of Plaintiff and the Class on the cause of action asserted herein, including all available damages;
- d. For prejudgment interest on all amounts awarded;
- e. For injunctive relief to stop the illegal conduct;
- f. For an order awarding Plaintiff and the Class their reasonable attorneys' fees, expenses and costs of suit;
- g. For any and all other relief, at law or equity, that may be appropriate.

Dated: May 15, 2023

PACIFIC TRIAL ATTORNEYS, APC

By: Scott J. Ferrell
Scott. J. Ferrell
Attorneys for Plaintiff